

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3750 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KIRIT P ANTANI

Versus

P K TANEJA OR HIS SUCCESSOR

Appearance:

MR KETAN A DAVE for Petitioners

MR SUDHANSHU PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/10/2000

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioners pray for a Writ of Certiorari or a Writ of Mandamus or any other appropriate Writ quashing and setting aside the order dtd. 26th May, 1992 passed by the Collector, Rajkot, directing the Additional Mamlatdar to take the possession of the Club

House and the land allotted, and the order dt. 28/5/1992 passed by the Additional Mamlatdar directing the petitioner - club to hand over the possession of the land allotted & club house taking away all its things and belongings etc.

2. Necessary facts may in brief be stated. The Rajkot Bankers Recreation Club, Rajkot was in need of the land for the purpose of carrying out smoothly and conveniently the recreation activities. The Club then made a representation to the then political agent, Western Kathiawad Agency for the allotment of the land. A letter in this regard on 5th September, 1946 was written to the political agent who was, considering the pros and cons of the matter, pleased to permit the Club to use the land for Outdoor Games with the clear understanding that permission given would not create any right in the land and the land would be taken over by the Civil Station at any time without any cause or without giving any notice and also without giving any payment of the compensation for any work done by the club on the land. After such allotment, the President of the Club, wrote a letter on 27th September, 1946 to the political agent and expressed his deep gratitude for granting permission to use the land, and also expressly accepting the condition of permission mentioned in the letter, copy of which is produced at Annexure-A. By that letter, the President sought clarification as to from what day the Club could start using the land and also proposed that in case the agency decided to sell the land in question, an opportunity to the Club might be given. Thereafter, on 14th October, 1946, the political agent sent a letter to the Club acknowledging the said letter. The president of the Club again wrote a letter to the political agent on 1st November, 1946 and sought permission to erect a small structure on the land which could be used as pavilion, without which the members of the Club were not in a position to use the land conveniently. It was also made clear by the President in the letter with definite & lucid understanding that in case the agency was asked to vacate the site, the Club would be under obligation to do so and would certainly give vacant possession of the land to the agency; and assuring accordingly, the permission to construct was sought. The political agent on 6th December, 1946, permitted the Club to construct a small club house on the land allotted with the clear understanding that Civil Station at any time without giving cause or without giving notice and without giving any compensation would take over the land including the land on which the club house would be constructed asking the Club to give possession of the land after removal of

the superstructure. Thereafter, on the land bearing City Survey No.2490 admeasuring 12742.46 sq.mtrs., a small club house which could be used as a pavilion house was constructed, and since then the Club is using the land as well as the superstructure. Some of the departments prior to May, 1992, sent proposal to the Collector for providing a building, if required after constructing the same, so that their offices could be housed therein. The land given to the club was the only land found fit and suitable bearing in mind the requirements of the Departments and for the construction of buildings for several offices as per the plans or design ideated or suggested. He, therefore, passed the order on 26th May, 1992 directing the Additional Mamlatdar to take possession of the Club House with immediate effect. The Addl. Mamlatdar then on 28th May, 1992 went to the site and in presence of two Panchas drew the Panchnama and took the possession locking the Club House. Having come to know about dispossession, the Club Authority has approached this Court by way of this Writ Petition, calling in question the legality and validity of the order passed by the Collector and another order passed by the Additional Mamlatdar on 28th May, 1992 as well as the Panchnama whereby the possession was taken over. Before proceeding further, it may be stated here that interim relief was also sought for, and with regards to the interim relief, this Court on 30th May, 1992, hearing the parties, granted interim relief under which the opponents were restrained from preventing the petitioners and their members from using and enjoying the ground and pavilion and also directed the opponents to remove the lock forthwith from the pavilion pending hearing of the notice as to the interim relief. Pursuant to the said order, the Club was again put into the possession removing the lock and thus, at present the petitioners are in possession of the land as well as the Pavilion House.

3. Assailing the order, Mr. Dave, the learned advocate for the petitioners contends that the opportunity of being heard was not at all given and therefore, the order is bad in law and cannot be maintained. In reply to such contention, Mr. Sudhanshu Patel, the learned AGP submits that the letter of appointment - Annexure-A dtd. 7th September, 1946 in clear terms makes it clear that as and when the possession is sought, the petitioners are bound to hand over the same without any notice or cause, and they also confirmed and accepted such term writing a letter on 27th September, 1945 which is produced at Annexure-B and again confirmed and accepted the same vide another letter dtd. 1st November, 1946 - Annexure-C. Thus they having waived

the right to claim the opportunity to submit, it is now not open to the petitioners to claim the opportunity of being heard. The Collector was, therefore, perfectly right in proceeding strictly and in accordance with the terms of the contract entered into with the petitioners.

4. What is the status of the petitioners is the point that arises for consideration for which one has to turn to initial letter of allotment which is produced at Annexure-A. The same makes it clear in unequivocal terms that the land was permitted to be used to the Club for Outdoor Games on the understanding that permission given to the Club would create no right, title or interest of any kind in the land, and the Civil Station (concerned officer) at any time without assigning any cause or without giving any notice and without payment of compensation for any work done by the Club on the land, take the possession. The land is given free of charge. The permission granted, therefore, in clear terms create a licence which is defined vide Sec.52 of the Indian Easement Act. Under that letter without charging anything, the political agent permitted to continue use the land which would be in absence of such permission unlawful and the right thus given does not amount to an easement or interest in the property. In view of the fact, the permission amounts to licence and the petitioners are therefore licensees.

5. When it is found that the petitioners are the licensees and they are not trespassers or not using the land unauthorisedly, the opponents who want to take the possession back, must undergo the formalities mandated in law. They cannot in the way they like or interpreting the writing or letters in the way they like take the possession.

6. If the authority wants to take the possession back, a notice revoking the licence has to be issued and some time to evict the premises must be given in the notice. If within the time granted in the notice, the licensee does not vacate, he would be then acquiring the status of a person unauthorisedly using & occupying the land, and in that case the authority has to take appropriate action under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and then obtain appropriate order. Unless that is done, the act of taking possession cannot be approved and the same has to be quashed and set aside.

7. Perusing the records it becomes clear that the Collector who wanted to have the possession back, may be

for laudable purpose, did not give a notice to the petitioners and even did not give any opportunity of being heard to the petitioners, and straightway he hastily passed the order of eviction on 26th May, 1992, which is under challenged. As the legal formalities are overlooked and opportunity to submit the case is not given, the order passed, being illegal in law is required to be quashed and set aside, on the ground that no one can be condemned unheard is the principle of law which is overlooked in this case.

8. For the aforesaid reasons, the application is allowed and the impugned order dtd. 28th May, 1992 and Panchnama dtd. 28th May, 1992, copy of which is produced at page 32, are hereby quashed and set aside, making it clear that it would be open to the opponents, if they want to take the possession to undergo the required formalities as per the discussion hereinabove, and take possession of the land.

Rule accordingly made absolute.

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